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Attorneys for Defendant Apple Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ASHLEY GJOVIK,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 23-cv-4597-EMC

**DECLARATION OF MELINDA S.
RIECHERT IN SUPPORT OF
DEFENDANT APPLE INC.'S MOTION
TO SHORTEN TIME RE: APPLE'S
MOTION TO DISMISS PLAINTIFF
ASHLEY GJOVIK'S FIFTH AMENDED
COMPLAINT PURSUANT TO FRCP
41(B)**

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9 Attorneys for Defendant
Apple Inc.
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1 I, Melinda S. Riechert, declare as follows:

2 1. I am an attorney admitted to practice law in the state of California and am a
3 partner at the firm Orrick, Herrington & Sutcliffe LLP. I am counsel for defendant Apple Inc. in
4 this action. I submit this declaration in support of Apple's motion to shorten time (the "Motion to
5 Shorten Time") for the court to hear Apple's Motion to Dismiss Plaintiff Ashley Gjovik's Fifth
6 Amended Complaint pursuant to Rule 41(b) of the Federal Rules of Civil Procedure (the "Rule
7 41(b) Motion to Dismiss"). I have personal knowledge as to the facts set forth in this declaration,
8 or where stated, I am informed and believe that the information is true and correct. If called as a
9 witness, I could and would testify competently thereto.

10 2. On November 12, 2024, I emailed Plaintiff to inform her that Apple intended to
11 move to dismiss the Fifth Amended Complaint pursuant to Rule 41(b) of the Federal Rules of
12 Civil Procedure. I asked if she intended to oppose the Rule 41(b) Motion to Dismiss. I also asked
13 if she would be willing to stipulate to the Motion to Change Time. That same day, Plaintiff stated
14 that she would oppose both motions.

15 4. A true and correct copy of my email exchange with Plaintiff is attached as **Exhibit**
16 **A.**

17 I certify under penalty of perjury and pursuant to the laws of the United States that the
18 foregoing is true and correct.

19 Executed November 13, 2024 in Powell, Tennessee.


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21
22 /s/ Melinda S. Riechert
Melinda S. Riechert
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Exhibit A

From: Riechert, Melinda
Sent: Wednesday, November 13, 2024 9:34 AM
To: Ashley M. Gjovik
Cc: Booms, Ryan; Juvinall, Kate; Mantoan, Kathryn G.; Perry, Jessica R.
Subject: RE: Gjovik v Apple, 3:23-cv-04597, Motion to Dismiss under Rule 41(b), for order shortening time and to stay deadline to respond to Fifth Amended Complaint

Thanks for getting back to us. We will not agree not to file a motion to dismiss the 5AC. We will go ahead and file the motion to dismiss under 41(b) and the motion to shorten time for the hearing.

Melinda Riechert
Partner

Orrick
Silicon Valley 
T 650/614-7423
M 650/591929
mrieichert@orrick.com



From: Ashley M. Gjovik <ashleymgjovik@protonmail.com>
Sent: Tuesday, November 12, 2024 8:58 PM
To: Riechert, Melinda <mrieichert@orrick.com>
Cc: Booms, Ryan <rbooms@orrick.com>; Juvinall, Kate <kjuvinall@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Perry, Jessica R. <jperry@orrick.com>
Subject: RE: Gjovik v Apple, 3:23-cv-04597, Motion to Dismiss under Rule 41(b), for order shortening time and to stay deadline to respond to Fifth Amended Complaint

[EXTERNAL]

My plan if I did this was simply to convert a few pages of longer words to abbreviations and acronyms. If you would agree to file an answer, and not a mtd or mts, in response to the 5AC content with 6AC abbreviations but the same content, (+ line numbers) then I'd do it. But I'm not doing any of the other options.

Again, I really wish you guys would stop wasting time - mine, and the court's. There's no tangible benefit to anyone by you doing this - it only causes more work for everyone and for no reason.

—
Ashley M. Gjovik
BS, JD, PMP


Sent with [Proton Mail](#) secure email.

On Tuesday, November 12th, 2024 at 10:35 PM, Riechert, Melinda <mrieichert@orrick.com> wrote:

Ashley

We cannot agree not to file a motion to dismiss the next draft of your complaint until we have seen it. If you want to submit a revised draft of your complaint that complies with the rules by end of day tomorrow, we will stipulate that you can file it, with our response date of December 12, 2024. If you don't want to agree, that is fine. We will file our motion under Rule 41(b) on Thursday.

Melinda Riechert
Partner

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Silicon Valley 
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M 650/7591929
mrieichert@orrick.com



From: Ashley M. Gjøvik <ashleymgiovik@protonmail.com>
Sent: Tuesday, November 12, 2024 4:21 PM
To: Riechert, Melinda <mrieichert@orrick.com>
Cc: Booms, Ryan <rbooms@orrick.com>; Juvinall, Kate <kjuvinall@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Perry, Jessica R. <jperry@orrick.com>
Subject: RE: Gjøvik v Apple, 3:23-cv-04597, Motion to Dismiss under Rule 41(b), for order shortening time and to stay deadline to respond to Fifth Amended Complaint

[EXTERNAL]

Hello,

I'm trying my best to negotiate with you in order to prevent Apple from causing even more unnecessary delays - however, what you wrote below is not what I had in mind.

If you want to treat this reformatting exercise as an entirely new complaint (sixth instead of fifth) that Apple has to "approve" I can file (as if I asked for this) - then instead, if you still want to pursue this, you should file a formal motion with your request because Judge Chen would need to approve the request and timeline as well, anyways. If we have to bother Judge Chen with this anyways, I'd rather bet on him telling you "no" than me having to spend time on this right now.

Again, its my understanding I did not violate any FRCP or local rules in choosing the spacing I did, or choosing not to have numbered lines -- as the paragraphs are numbered, which is what is required. I did technically violate Judge Chen's Order by filing the complaint after the deadline he set for me, but I already explained why that occurred last week when I responded to Apple's strange response to the Motion to Stay -- and I've been 1-2 days late on most of my major filings in this case, with similar explanations - but this is the first time Apple's claimed the slight delay should result in a dismissal with prejudice. Further, here, Apple's solution is even more delays.

However, on a final note - I will play along with you on all of this, if Apple was willing to also stipulate that Apple will file an Answer in response the 6AC, and will not file another 12(b)(6) or 12(f) motion.

-Ashley

—

Ashley M. Gjovik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.

On Tuesday, November 12th, 2024 at 7:08 PM, Riechert, Melinda <mrrechert@orrick.com> wrote:

Ashley

If you send us a proposed Sixth Amended Complaint by close of business tomorrow with proper formatting and on numbered pleading paper in order to comply with the page limit and that otherwise complies with Judge Chen's operative orders; we will prepare a stipulation permitting you to file a Sixth Amended Complaint with Apple's response to the Sixth Amended Complaint due by December 12, 2024.

Melinda Riechert
Partner

Orrick
Silicon Valley 

T 650/614-7423
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mrieichert@orrick.com



From: Ashley M. Gjøvik <ashleymgjovik@protonmail.com>
Sent: Tuesday, November 12, 2024 12:45 PM
To: Riechert, Melinda <mrieichert@orrick.com>
Cc: Booms, Ryan <rbooms@orrick.com>; Juvinal, Kate <kjuvinall@orrick.com>;
Mantoan, Kathryn G. <kmantoan@orrick.com>; Perry, Jessica R. <jperry@orrick.com>
Subject: RE: Gjoik v Apple, 3:23-cv-04597, Motion to Dismiss under Rule 41(b), for
order shortening time and to stay deadline to respond to Fifth Amended Complaint

[EXTERNAL]

Hello,

What do you mean by 'pleading paper'? Numbered lines?

In compliance with Rule 10 my 5AC has a caption with names of the parties, and uses numbered paragraphs. In compliance with civil local rule 3-4, my pleading has my contact information in the upper left corner, name of the court and Judge, and the title of the document in the footer.

I did not include numbered lines because the paragraphs are numbered, and because the requirement for numbered lines is only under local rules for "manual filing" (paper filings).

I changed the font and format of my pleadings after Joanna Appleseed kept mailing the court letters harassing me and she copied the format/layout of my pleadings exactly, which seriously creeped me out & I felt it necessary to use a format that would be more difficult for her to copy in her future stalker letters. (Have you told her to stop this, yet?)

If I refile the complaint today with numbered lines, and with removing however many pages gets it to 28 lines per page -- would you agree to not file this motion?

—
Ashley M. Gjøvik

BS, JD, PMP


Sent with [Proton Mail](#) secure email.

On Tuesday, November 12th, 2024 at 3:25 PM, Riechert, Melinda
<mriechert@orrick.com> wrote:

Ashley

You did not file the Fifth Amended Complaint (5AC) on pleading papers, as required by the court rules and as you have always done previously. As a result the 5AC contains well over 80 pages of text (though, on its face, it is 74 pages in length), as it has 31 lines per page (despite Civ. L.R. 3-4(c)(2)'s requirement of "no more than 28 lines per page") and narrowed margins at the expense of numbered lines (despite Civ. L.R. 3-4(c)(1)'s requirement of numbered lines).

Melinda Riechert
Partner

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From: Ashley M. Gjøvik <ashleymgiovik@protonmail.com>
Sent: Tuesday, November 12, 2024 10:50 AM
To: Riechert, Melinda <mrieichert@orrick.com>
Cc: Booms, Ryan <rbooms@orrick.com>; Juvinall, Kate <kjuvinall@orrick.com>; Mantoan, Kathryn G. <kmantoan@orrick.com>; Perry, Jessica R. <jperry@orrick.com>
Subject: RE: Gjovik v Apple, 3:23-cv-04597, Motion to Dismiss under Rule 41(b), for order shortening time and to stay deadline to respond to Fifth Amended Complaint

[EXTERNAL]

Hello,

I oppose all motions mentioned below. I also protest that this is more time wasting and harassing tactics from Apple, that is trying to further harm me, and avoid having this case decided on the merits.

The complaint is 75 pages - what is your argument?

If you make the argument about the deadline, I will be responding in detail with the extensive harassment I've faced from your firm, the client, and the client's other firms in just the last couple months. For example, why did an Apple Global Security Crisis Manager call me on Oct. 2 to harass me about this litigation and the negative press coverage that Apple arranged earlier that morning? She called from her own phone, during work hours, on a work day. I've asked Apple & counsel to cease this kind of conduct for years now.

—

Ashley M. Gjøvik

BS, JD, PMP

Sent with [Proton Mail](#) secure email.


On Tuesday, November 12th, 2024 at 1:33 PM, Riechert, Melinda <mrieichert@orrick.com> wrote:

Ashley,

Pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, Apple intends to move the Court for an order dismissing with prejudice the Fifth Amended Complaint, leaving only the claims not dismissed in the Fourth Amended Complaint, on the grounds that you failed to comply with the Court's October 1, 2024 order (Dkt. 112) requiring you to file a Fifth Amended Complaint limited to 75 pages and its subsequent October 25, 2024 order (Dkt. 123) requiring you to do so by November 5, 2024. We intend to file the motion later today. Do you intend to oppose this motion?

Apple also intends to file a motion to shorten time requesting that the Court advance the hearing on the Rule 41(b) motion to November 21, 2024 and stay Apple's deadline to respond to the Fifth Amended Complaint until the Court rules on the Rule 41(b) motion. Would you be willing to stipulate to this motion?

Melinda Riechert
Partner

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